

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

MATTHEW ANDREW GARCES,  
*Plaintiff*

-VS-

BRAIN AND SPINE INSTITUTE OF  
SAN ANTONIO, OSAMA AHMED,  
M.D., KIMBERLY GUAJARDO, APRN-  
CNP.

### *Defendants*

SA-25-CV-00639-XR

## ORDER ADOPTING REPORT AND RECOMMENDATION

On this date the Court considered United States Magistrate Judge Elizabeth S. Chestney's Report and Recommendation ("Recommendation") in the above-numbered case, filed June 20, 2025 (ECF No. 4), recommending that Plaintiff's Motion to Proceed *in forma pauperis* be **GRANTED**. After careful consideration, the Court **ADOPTS** the Magistrate Judge's Recommendation.

## BACKGROUND

Plaintiff Matthew Andrew Garces, proceeding *pro se*, filed a motion to proceed *in forma pauperis* and a proposed Complaint on June 9, 2025. ECF No. 1. Plaintiff's proposed Complaint names three Defendants—Brain and Spine Institute of San Antonio; Osama Ahmed, M.D., and Kimberly Guajardo, APRN-CNP. Plaintiff brings claims under the Americans with Disabilities Act as well as Texas state law.

Judge Chestney concluded that the factual allegations in Plaintiff's proposed Complaint stated a plausible claim under Title III of the ADA for injunctive relief against Defendant Brain and Spine Institute of San Antonio, as he alleges it denied him medical care due to his use of a service animal. ECF No. 4 at 5. So Judge Chestney recommended that Plaintiff's application to

proceed *in forma pauperis* be granted, but that the Court defer a decision on whether to exercise supplemental jurisdiction over Plaintiff's state-law claims and withhold service of Plaintiff's Complaint on the individual defendants at this time. ECF No. 4 at 6–7.

### **ANALYSIS**

Any party who desires to object to a Magistrate Judge's findings and recommendations must serve and file his or her written objections within fourteen days after being served with a copy of the findings and recommendations. 28 U.S.C. § 636(b)(1). Plaintiff was mailed a copy of the Report and Recommendation via Certified Mail on June 23, 2025, with return receipt. ECF Nos. 6, 13. To date, no objections have been filed with the Court.

Because Plaintiff has not timely objected to the Report and Recommendation, the Court need not conduct a *de novo* review. *See* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”).

The Court has reviewed the Recommendation and finds it to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Accordingly, the Court **ADOPTS** the Judge Chestney's Report and Recommendation in all respects.<sup>1</sup>

### **CONCLUSION**

For the foregoing reasons, the Court **ACCEPTS** and **ADOPTS** the Magistrate Judge's Report and Recommendation (ECF No. 4). The Court defers a decision on whether to exercise supplemental jurisdiction over Plaintiff's state-law claims.

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<sup>1</sup> While Plaintiff filed a Notice of Appeal of “Plaintiff's Ignored Motion for Recusal of Magistrate Judge Elizabeth S. ‘Betsy’ Chestney,” ECF No. 9 (which the Court denied before his Notice of Appeal was docketed, but after it was filed, *see* Text Order, June 30, 2025), this did not divest the Court of jurisdiction. The denial of the recusal motion “is not an appealable interlocutory order,” *Nobby Lobby Inc. v. City of Dallas*, 970 F.2d 82, 85 n. 3 (5th Cir. 1992), and the Court “retains jurisdiction . . . when the notice of appeal relates to an order that is not immediately appealable.” *Barnes v. BP Expl. & Prod. Inc.*, No. 17-CV-3036, 2022 WL 3924317, at \*1 n.1 (E.D. La. Aug. 30, 2022); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

The Court observes that Plaintiff has not complied with the Magistrate Judge's Order directing Plaintiff to "submit to the Clerk's Office a fully completed United States Marshals Service Form 285, including a fully complete address, **for Defendant Brain and Spine Institute of San Antonio only.**" ECF No. 4 at 7. Plaintiff is **DIRECTED** to comply with Judge Chestney's Order **BY JULY 21, 2025. Failure to do so will result in this case being dismissed.**

It is so **ORDERED**.

**SIGNED** this 11th day of July, 2025.



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XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE